dahulu. Saya petik perenggan 3 and 4 dalam surat yang kedua itu:

> The equipment was in fact delivered to the work site in Kuala Brang to Gai Nge Huat by DEP Trading (M) Sdn Bhd on behalf of Syarikat Eng Seng. The payments received from Gai Nge Huat for the use of the equipment were paid directly to the aforesaid DEP Trading (M) Sdn Bhd who then forwarded the said payments to your clients.
>
> Our client thereafter made numerous attempts to locate the equipment and in fact went to the work site with personnel of DEP Trading (M) Sdn Bhd but was unable to trace the equipment or the aforesaid Gai Nge Huat.
>
> Our client has used his best endeavours to locate the equipment but to date has been unable to do so.

Pada pendapat saya surat itu tidak bercanggah dengan surat pertama.

Setelah menimbangkan prinsip undang-undang mengenai perkara ini dan setelah menimbangkan keterangan-keterangan yang terkandung dalam afidavit-afidavit dan dokumen-dokumen dalam kes ini, saya berpendapat bahawa ini bukanlah satu kes di mana mahkamah, dengan menggunakan budibicaranya, boleh membuat perintah pengkomitan ke atas pihak defendan pertama atas sebab penghinaan mahkamah.

Oleh yang demikian, saya menolak permohonan plaintif dengan kos.

Permohonan ditolak.

Peguamcara: *Lee Kee Huat & Associates*; *Shearn Delamore & Co.*

Dilapurkan oleh *Zarinah Marican*

Chee Hock Lai v Tan Swee Thai & Ors

HIGH COURT (IPOH) —CIVIL SUIT NO 884 OF 1983
ABDUL MALEK J
15 JUNE 1990

Land Law — Sale and purchase of land — Purchaser in possession — Whether purchaser has equitable title — Limitation period to claim transfer of legal title

Civil Procedure — Limitation — Purchaser of land in possession — When limitation period commences — Equitable title to land — Approval of court required in agreement — Whether there was a breach of agreement — Whether limitation period commenced

Succession — Probate and administration — Administrator transferred title to beneficiaries against the terms of agreement — Whether administrator has power to enter into agreement/action without approval of court — Probate and Administration Act 1959, ss 60 & 71

The plaintiff is the administrator of the estate of CS who bought the land in question from the first defendant, who is the administrator of the estate of WL, the owner of the land. By an agreement of 3 June 1949 the first defendant had agreed to sell the land for $280 and also agreed to obtain a court order to transfer the land to CS. Vacant possession was given to CS who paid the price and had occupied the land until his death. Thereafter the plaintiff and his relations continued to occupy the land and paid all expenses with the knowledge and consent of all the defendants.

Despite several efforts to get the first defendant to transfer the land to CS during his lifetime, and to the plaintiff after CS's death, the first defendant had failed to do so. In fact the first defendant transferred the land to herself and her six children on 1 April 1963 as a result of her marriage to WL. The defendants raised a preliminary argument, alleging that the limitation period in this particular case was 12 years which should commence on 1 April 1963, the date of the transfer.

Held, allowing the plaintiff's claim and dismissing the defendants' counterclaim:

(1) A purchaser of land who has entered and occupied it without getting the title is regarded as someone having an equitable title. There are facts sufficient to determine that CS and subsequently the plaintiff had actually from the date of agreement occupied the land equitably. In this particular case what was important was the date of the breach of the agreement. The breach could only take place via cl 4 of the agreement which stated that the vendor was compelled to return the purchase price of the land and an additional equivalent amount together with all other expenses of the purchaser in improving the land if and only if the vendor failed to transfer the said land after getting the approval of court. The approval has yet to be obtained and the question of the refusal by the vendor to transfer the said land has not arisen. As such the limitation period is not an issue. The claim was made by the plaintiff only when the defendants objected to the erection of a house on the land in 1983. The delay in the claim was justified as there were no strong objections from the first defendant previously and the plaintiff had obtained an equitable title.

(2) Sections 60 and 71 of the Probate and Administration Act 1959 clearly state that when an administrator of an estate takes action without getting the approval of the court, the said action or any agreement made does not become null and void on

the application of any party who has an interest in the matter. In this case, no one has taken any steps to vitiate the said agreement and moreover consent of the beneficiaries was not necessary to make the said agreement.

(3) In respect of the defence that moneys was refunded to CS, this evidence cannot be accepted as, if the intention of the first defendant in doing so was to nullify that agreement, she should at least take a copy of the agreement in CS's possession or better still obtain a receipt from CS as regards the payment. In continuing to allow CS and his family and other relatives to occupy the said land for 40 years and pay quit rents and all other expenses only strengthens the allegation of the plaintiff that the money had never been paid.

(4) The absence of the first defendant as a party to the agreement who is still living without any medical certificate from any medical authority as to why she could not be present in court only made it difficult for the court to get the correct version from her but this did not affect the ability of the court to reach a decision on the considerations mentioned.

[Bahasa Malaysia summary

Plaintif ialah pentadbir harta pusaka CS yang telah membeli tanah yang dipertikaikan di sini daripada defendan pertama, yang merupakan pentadbir harta pusaka WL, pemilik tanah itu. Melalui satu persetujuan bertarikh 3 Jun 1949, defendan pertama telah bersetuju menjual tanah itu untuk $280 dan juga bersetuju memperolehi perintah mahkamah untuk memindahkan tanah itu kepada CS. Pemilikan kosong telah diberi kepada CS yang telah membayar harga itu dan beliau telah menduduki tanah itu sehingga kematiannya. Selepas itu, plaintif dan saudara-maranya terus menduduki tanah itu dan membayar semua perbelanjaan dengan pengetahuan dan persetujuan kesemua defendan-defendan.

Meskipun usaha telah beberapa kali dibuat untuk meminta defendan pertama memindakan tanah itu kepada CS semasa hayatnya, dan kepada plaintif selepas kematian CS, defendan pertama telah gagal berbuat demikian. Malah defendan pertama telah memindahkan tanah itu kepada dirinya dan enam orang anaknya pada 1 April 1963 berikutan perkahwinannya kepada WL. Pihak defendan membangkitkan satu hujah permulaan, mendakwa yang tempoh pembatasan masa dalam kes ini ialah 12 tahun yang seharusnya bermula pada 1 April 1963, tarikh pemindahan itu.

Diputuskan, meluluskan tuntutan plaintif dan menolak tuntutan balas pihak defendan:

(1) Seorang pembeli tanah yang telah memasuki dan menduduki tanah itu tanpa memperolehi hakmilik disifatkan sebagai seorang yang mempunyai hakmilik ekuiti. Terdapat fakta yang mencukupi untuk menentukan bahawa CS dan kemudiannya plaintif telah menduduki tanah itu secara ekuti dari tarikh persetujuan itu dalam kes ini, apa yang penting ialah tarikh persetujuan itu. Dalam kes ini, apa yang penting ialah tarikh persetujuan itu dimungkiri. Pemungkiran cuma boleh berlaku menerusi fasal 4 persetujuan itu yang menyatakan bahawa penjual dimestikan memberi balik harga pembelian tanah itu dan sejumlah tambahan yang sama bersama semua perbelanjaan pembeli yang lain untuk memperbaiki tanah itu hanya dan cuma hanya jika penjual gagal memindahkan tanah itu selepas memperolehi izin mahkamah. Izin itu belum lagi diperolehi dan soalan keengganan penjual memindahkan tanah itu tidak berbangkit. Jadi, pembatasan masa tidak menjadi isu. Tuntutan telah dibuat oleh plaintif cuma bila pihak defendan membantah terhadap pembinaan sebuah rumah di atas tanah itu pada 1983. Kelambatan dalam membuat tuntutan itu adalah wajar kerana tidak ada bantahan keras daripada defendan pertama sebelum itu dan plaintif telah memperolehi hakmilik ekuti.

(2) Sekeyen-seksyen 60 dan 71 Akta Probet dan Pentadbiran 1959 menyatakan dengan jelas bahawa bila seorang pentadbir sebuah harta pusaka mengambil tindakan tanpa memperolehi izin mahkamah, tindakan itu atau apa-apa persetujuan yang dibuat tidak menjadi batal dan tidak sah berikutan permohonan oleh mana-mana pihak yang berkepentingan dalam perkara itu. Dalam kes ini, tiada sesiapa yang mengambil langkah untuk membatalkan persetujuan itu, bahkan izin benefisiari adalah tidak perlu untuk membuat persetujuan itu.

(3) Berkenaan pembelaan bahawa wang telah diberi balik kepada CS, keterangan ini tidak boleh diterima kerana, jika tujuan defendan pertama berbuat demikian ialah untuk membatalkan persetujuan itu, beliau harus sekurang-kurangnya mengambil satu salinan persetujuan itu yang berada dalam tangan CS, atau lebih baik lagi memperolehi satu resit daripada CS tentang pembayaran itu. Dalam mengizinkan CS dan keluarganya dan saudara-maranya yang lain terus menduduki tanah itu selama 40 tahun dan membayar cukai tanah dan perbelanjaan yang lain cuma menguatkan dakwaan plaintif bahawa wang itu tidak pernah dibayar.

(4) Ketidakhadiran defendan pertama, yang merupakan pihak kepada persetujuan itu, yang masih hidup tanpa apa-apa surat akuan perubatan daripada mana-mana pihak berkuasa perubatan untuk menerangkan kenapa beliau tidak boleh hadir di mahkamah menyusahkan mahkamah dalam usahanya memperolehi cerita yang benar daripadanya, tetapi ini tidak menghalang mahkamah mencapai keputusan atas pertimbangan yang telah dinyatakan.]

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 02-217-90.]

Cases referred to

1 *Williams* v *Greatrex* [1957] 1 WLR 31 (refd)
2 *Munah* v *Fatimah* [1968] 1 MLJ 54 (folld)
3 *Kersah La'usin* v *Sikin Menan* [1966] 2 MLJ 20 (folld)
4 *Tan Swee Lan* v *Engku Nik bte Engku Muda & Ors* [1973] 2 MLJ 187 (refd)
5 *Halijah* v *Morad & Ors* [1972] 2 MLJ 166 (refd)
6 *Nasri* v *Mesah* [1971] 1 MLJ 32 (refd)
7 *Chee Ah and Che Yang Kelsom* v *Che Ahmad* [1941] MLJ 126 (refd)
8 *Yap Yoke Luan & Ors* v *Ong Wee Tok & Ors* [1984] 1 MLJ 23 (refd)
9 *Kechik & Ors* v *Habeeb Mohamed & Anor* [1963] 29 MLJ 127 (refd)
10 *Foster* v *Bates* (1843) 12 M & W 226; 152 ER 1180 (refd)
11 *Itam bte Saad* v *Chik bte Abdullah* [1974] 2 MLJ 53 (folld)
12 *Chik bte Abdullah* v *Itam bte Saad* [1974] 1 MLJ 221 (folld)

Legislation referred to

Probate and Administration Act 1959 ss 60, 71

A Iruthaya Raj for the plaintiff.
Lim Teik Cheong for the defendants.

Cur Adv Vult

Abdul Malek J: This case involves EMR 2564 in lot no 1983 now held under GM no 882 mukim Grik in the state of Perak Darul Ridzuan (hereinafter 'the said land'). According to the plaintiff who is the legal administrator of

the estate of Chee Soo (hereafter 'CS') who had passed away on 7 December 1977, CS had bought the said land from the first defendant, who is the legal administrator of the estate of Wee Lee @ Ooi Lee, the owner of the said land, by an agreement entered on 3 June 1949.

The first defendant had agreed by the said agreement to sell the said land for $280 and had also agreed to obtain a court order to transfer the said land to CS. With the payment of $280, the first defendant had given CS vacant possession of the said land. Following that, CS had occupied the said land and after his death, the plaintiff had occupied it and paid all expenses including the quit rents with the knowledge and consent of all the defendants.

Although the first defendant had been asked several times to transfer the said land to CS during his lifetime and to the plaintiff after CS's death, the first defendant had failed to do so although she had promised to. On the contrary, the first defendant had contravened the provisions of the agreement entered between her and CS by transferring the said land to herself and to her six children, as a result of her marriage to Wee Lee @ Ooi Lee, on 1 April 1963.

It is pertinent to state that the defendants had made an application by way of summons-in-chambers which was filed on 17 March 1986 for a declaration that the agreement made on 3 June 1949 between CS and the first defendant is null and void and for an order that the plaintiff or whosoever suing on his behalf surrender the said land back to all the defendants. Unfortunately, this matter went on for three years before it was heard on 17 April 1989 where after hearing the submissions of counsel for both sides, I had held that the said application ought to be dismissed with costs on the grounds that there were issues to be tried.

Before the hearing of the case proceeded on the date of hearing, learned counsel for the defendants had raised a preliminary objection as regards the limitation period. He had stated that as this was an action to recover land, the relevant limitation period was 12 years which should have commenced on 1 April 1963 which was the date the first defendant had transferred the said land to herself and to her six children. As this suit was filed in 1983, the said counsel had contended that it had been done after the prescribed limitation period. After considering the submissions of both sides as regards the limitation period, I had dismissed it based on several decisions on the same point. In *Williams* v *Greatrex*,[1] the court had held that a delay in taking an action for specific performance did not matter for a purchaser of land who had taken possession of the said land as he held an equitable title to the said land. This had been followed in the cases of *Munah* v *Fatimah*[2] and *Kersah La'usin* v *Sikin Menan*[3] where the facts are almost similar to the statement of claim in this case.

To support his claim at the hearing, the plaintiff (PW1) had told the court that although he was not yet born on the date of the agreement, he knew that his father CS had planted and tapped rubber trees on the said land and had paid the quit rents. A number of quit rent receipts had been tendered. Although at the beginning CS did not occupy the said land until 1974, he had allowed his relative, Looi Kim Fatt to do so. The plaintiff's elder brother Chee Pak Kim (PW2) had also occupied the said land together with their relative Chee Kim Chee (PW3) and PW2 had built a fish pond and pig sty. The plaintiff had also told the court that CS had the occasion to tell him of the said agreement and that he had kept the document of title until the first defendant had asked for it for the purpose of applying for the letters of administration. CS had also built a house and a store and had allowed his relative to build a second house. The plaintiff had also told the court that the defendants knew of all these and had never made any objections. Also, he was not aware if the defendants had returned the $560 to his late father, CS, for the said land.

PW2 had corroborated the plaintiff's testimony and had also given evidence that his late father had started to plant on the said land when PW2 was about three or four years old in 1951 or 1952. Also, PW2 had stated that the defendants had objected when he wanted to build his house on the said land in 1983 and because of that, work had been stopped. Despite that, he said that before that there was already a house on the said land built by CS and Looi Kim Fatt. PW3 had then given evidence that he had built a house on the said land in 1972.

On behalf of all the defendants, Wang Lian Wu (DW1) had stated that the first defendant, namely, his mother, was 72 and could not attend court. Further his mother had been admitted to Hospital Bahagia several times. DW1 had also told the court that he was not aware as regards the said agreement until the time his mother wanted to subdivide the land and had told him of the said agreement. All the beneficiaries had objected to the said agreement, he said, as the said land which was small was the only piece of land left by their late father. Because of that, the first defendant did not transfer the said land to the plaintiff.

DW1 had also given evidence that if the said agreement was breached, the first defendant had to pay back to CS twice the amount of $280 which was $560. According to DW1, the sum of $560 had in fact been paid to CS after the said land had been subdivided among all the beneficiaries in the sixties by two payments within a period of one month. After the payments, the plaintiff had still occupied the said land and DW1 had objected but as all the defendants did not require the said land at that time, they had allowed the plaintiff's family to use the said land until the defendants required it.

Under cross-examination, DW1 had told the court that he did not know that his deceased father had a debt of $2,000 at the time of his death, that his mother had sold the said land to CS to pay back part of that debt, that the price of the said land was $280, the date his mother took out the letters of administration for his father's estate and whether his mother had administered the estate before the grant for the letters of administration was given. DW1 had also stated that his mother was an invalid and could not talk properly because of mental problems but he denied that he had purposely not brought her to court as he was afraid that she might give evidence contrary to the other defendants.

As regards the limitation period, I had decided on the preliminary objection before the case was heard as based on the statement of claim and a number of relevant authorities, the question of the limitation period was not a yardstick in a situation where a purchaser of land had entered and occupied it without getting the title. He was regarded as someone having an equitable title. After hearing the evidence, it is clear that CS actually did not occupy the said land physically but the deceased had planted and tapped the rubber trees, planted vegetables and had allowed his relative to occupy the said land. This was followed by his son and another relative occupying the said land. During that period, two houses, a store, a fish pond and a pig sty had been erected. Also, CS and later the plaintiff had paid the quit rents. In my view, these facts suffice to determine that CS and subsequently the plaintiff had actually from the date of the agreement occupied the said land equitably.

Pursuant to that, as stated earlier, the cases of *Williams* v *Greatrex*,[1] *Munah* v *Fatimah*[2] and *Kersah La'usin* v *Sikin Menan*[3] are applicable. However, I was also referred to the cases of *Tan Swee Lan* v *Engku Nik bte Engku Muda & Ors*,[4] *Halijah* v *Morad & Ors*[5] and *Nasri* v *Mesah*.[6] In the first case, the Federal Court had held that the fact of possession was not a factor to determine the date when the limitation period began and it began on the date the vendor refused to transfer the said land. In the second case which was heard a year earlier, the Federal Court had rejected the contention that the party who was claiming had occupied the land not as a purchaser but as a creditor and because of that held that the principles of *Williams* v *Greatrex*[1] did not apply. In the third case, the Federal Court had decided that the limitation period began from the date of breach and they did not touch on the question of possession.

Learned counsel for the defendants had stated that the date of breach was when the first defendant subdivided the said land to herself and to her children on 1 April 1963. Learned counsel for the plaintiff meanwhile submitted that as the said agreement depended on the approval of the court, the breach can only take effect after the first defendant refused to transfer after getting the approval of the court. In these circumstances, he contended that at the earliest the breach was when the defendants had objected to the plaintiff erecting his house in 1983.

Guided by all the authorities tendered, I held that the fact of possession was no longer the main question to determine the issue of the limitation period but this factor becomes relevant in considering the delay in making the claim. What was important was the date of the breach of the agreement. In the said agreement, the breach can only take place vide cl 4 which states that the vendor is compelled to return the purchase price of the said land and an additional equivalent amount together with all other expenses of the purchaser in improving the land if and only if the vendor fails to transfer the said land after getting the approval of the court. Because following the facts of this case the approval of the court has yet to be obtained, the question of the refusal by the vendor to transfer the said land to the purchaser had not arisen yet. As such, the breach has not taken place.

It may be contended that when the first defendant transferred the said land to herself and to the other defendants on 1 April 1963, it meant that she did not want to get the approval of the court as regards the said agreement and because of that the breach has taken place but my view is the breach is not in the refusal to get the approval of the court but the refusal to transfer after getting the approval of the court. It is true that 40 years had passed from the date of the agreement and the said agreement was conditional upon the first defendant getting the approval of the court but as the breach in my opinion has not taken place, the limitation period was not an issue. As regards the delay in filing the claim, the plaintiff all this while had obtained the title without any strong objections from the first defendant and was considered to have obtained an equitable title. The claim had been made only when the defendants objected to the erection of a house on the said land in 1983. In my opinion, the delay was justified.

The second matter raised by learned counsel for the defendants is that the first defendant had no locus standi to enter into the agreement as, on the date of the agreement on 3 June 1949, the first defendant had not yet been granted the letters of administration to the estate of Wee Lee @ Ooi Lee which was only granted on 3 May 1950. In addition, the second to the seventh defendants were under age and the said agreement should not bind them. He had made reference to the case of *Che Ah and Che Yang Kelsom* v *Che Ahmad*[7] and *Yap Yoke Luan & Ors* v *Ong Wee Tok & Ors*[8] where the court had held that in a situation where the land is sold by a conditional agreement as in this case, it is not for the court to consider the interest of the purchaser but the court had to maintain and protect

the rights of those who had an interest in the said property.

Learned counsel for the plaintiff had referred me to two cases where it was decided that where an administrator to the estate of a deceased took action before getting the approval of the court to administer the said estate, all his actions as an administrator before the date of the approval were deemed to be valid. The said cases are *Kechik & Ors* v *Habeeb Mohamed & Anor*[9] and *Foster* v *Bates*.[10]

Based on the said authorities, I had referred to ss 60 and 71 of the Probate and Administration Act 1959 where the provisions clearly state that where an administrator of an estate takes action without getting the approval of the court, the said action or any agreement made does not become null and void on the application of any party who has an interest in the matter. In this case, no one has taken any steps to vitiate the said agreement and moreover following the case of *Itam bte Saad* v *Chik bte Abdullah*[11] which was upheld by the Federal Court in *Chik bte Abdullah* v *Itam bte Saad*,[12] the consent of the beneficiaries is not necessary to make the said agreement.

The next matter is as regards the refund of $560 to CS as stated by DW1. After having given it my full scrutiny, I held that this evidence cannot be accepted as if the intention of the first defendant in doing so was to nullify that agreement, she should at least take a copy of the agreement in CS's possession or better still obtain a receipt from CS as regards the payment. Further, in continuing to allow CS, his family and other relatives to occupy the said land for 40 years and to pay the quit rents and all other expenses only strengthens the allegation of the plaintiff that the said money had never been paid. Also, DW1 could not give the dates payment was made. The question of compensation only arises if the first defendant refuses to transfer the said land after getting the approval of the court but this had yet to be obtained to this day. This problem should be considered in the light of the stand of the defendants that the said agreement was null and void. Why should they agree to pay the compensation if that was their stand?

After hearing the whole of this case and having considered the submissions of learned counsel for both sides and the relevant authorities, my conclusive view was that the sale and purchase agreement for the said land had been made on 3 June 1949 between CS and the first defendant when she had yet to obtain the grant of the letters of administration from the court for her late husband's estate but the grant which was given almost a year later had confirmed the said agreement, that CS and subsequently his family and relatives had entered and occupied the said land and had paid all expenses including the quit rents up to this day, that by doing so the plaintiff had an equitable title, that the said agreement was a conditional agreement and that a breach could only occur if the first defendant had refused to transfer the said land after getting the approval of the court, that the limitation period only begins from the date of the breach and that as that had not happened, the limitation period is irrelevant, and that the allegation of the defendants that the compensation had been paid in 1963 was not true based on the factors which had been stated. The absence of the first defendant, as a party to the agreement, who is still living without any medical certificate from any medical authority on why she could not be present in court only made it difficult for the court to get the correct version from her but this did not affect the ability of the court to reach a decision on the considerations mentioned. Judgment should be given to the plaintiff and the defendants' counterclaim ought to be dismissed with costs. I also held that in the circumstances, no order for damages need to be made against the defendants.

Order accordingly.

Solicitors: *Raj Selva & Co*; *Lim Seong Chun & Co.*

Reported by *Yap Shao Sin*

Bank Bumiputra Malaysia Bhd & Anor v Lorrain Esme Osman

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO C138 OF 1985
ZAKARIA YATIM J
4 JUNE 1990

Civil Procedure — Injunctions — Mareva injunctions in force in Malaysia — Application to dissolve injunctions — Allegation that injunctions did not preserve assets of defendant but impaired them — Allegation that injunctions were oppressive — Order for early trial — Allegation that plaintiff did not prosecute action diligently — Defendant in need of money for legal proceedings abroad — Defendant not having any more assets abroad — Foreign proceedings involving personal liberty of defendant — Whether assets of defendant in Malaysia may be released to pay foreign legal costs

On 10 January 1985 and 15 January 1985, the plaintiffs had obtained certain Mareva injunctions against the defendant. The defendant applied in 1990 for an order dissolving the injunctions, alternatively for an order that the injunctions be varied so as to allow him to take from his assets the equivalent in Malaysian currency of the sum of £220,000 for legal expenses outstanding and to be incurred in the near future. The defendant also sought leave to utilize for the payment of the legal expenses the balance of the proceeds of sale of his assets or assets owned by companies owned or controlled by him, after payment of all debts and other outgoings. The defendant alleged that the injunctions were wide-sweeping in nature and had the effect of curtailing significantly the operations, and brought about the failure, of many of his companies and by their far-reaching consequences, had resulted in a diminution of the value of his assets, rather than their preservation. He also said that, having obtained the